

CAMPAIGN SPENDING LAW

Campaign Spending Commission
235 South Beretania Street, Room 300
Honolulu, Hawaii 96813
Telephone: 586-0285
Web Address: www.hawaii.gov/campaign

TABLE OF CONTENTS

CHAPTER 11 PART XII, SUBPART B

ELECTION CAMPAIGN CONTRIBUTIONS and EXPENDITURES

§11-191	Definitions	1
§11-192	Campaign spending commission	4
§11-192.5	Commissioners; political activities	5
§11-193	Duties of the commission	5
§11-194	Registration	6
§11-195	Filing of reports; generally	7
§11-196	Organizational report, candidate's committee	7
§11-196.5	Organizational report; noncandidate committee	8
§11-197	Designated central committee	8
§11-198	Campaign treasurer	9
§11-199	Campaign contributions, generally	9
§11-200	Campaign contributions, restrictions against transfer	9
§11-201	Anonymous contributions; unlawful	10
§11-202	False name	10
§11-203	Fundraiser and fundraising activities	11
§11-204	Campaign contributions; limits as to persons	11
§11-205	Campaign contributions; limits as to political parties	13
§11-205.5	Campaign contributions by state contractors	13
§11-205.6	Campaign contributions; loans	13
§11-206	Campaign contributions; restrictions as to excess	14
§11-207	Other contributions and expenditures	14
§11-207.5	Late contributions; reports	15
§11-207.6	Electioneering communications	15
§11-208	Voluntary campaign expenditure limitation	16

§11-209	Campaign expenditures; limits as to amounts	16
§11-210	Study and recommendation	17
§11-211	House bulletins	17
§11-212	Preliminary reports	17
§11-213	Final and supplemental reports	18
§11-214	Disposition of funds	20
§11-215	Advertising	20
§11-216	Complaints, investigation, and notice; determination	21
§11-217	Hawaii election campaign fund; creation	22
§11-217.5	Depletion of fund	22
§11-218	Candidate funding; amounts available	22
§11-219	Qualifying campaign contributions; amounts	23
§11-220	Eligibility for payments	24
§11-221	Entitlement to payments	24
§11-222	Candidate funding; application	24
§11-223	Candidate funding; restrictions	25
§11-224	Public funds; report required; return of funds	26
§11-225	Public funds; examination and audit, payments	26
§11-226	Tax deductions	26
§11-227	Public notices	27
§11-228	Administrative fines; relief	27
§11-229	Criminal prosecution	28

§11-191 Definitions. When used in this subpart:

“Advertisement” means:

- (1) Any communication, exclusive of bumper stickers or other sundry items, that:
 - (A) Identifies a candidate either directly or by direct implication;
 - (B) Advocates or supports the nomination for election of the candidate;
 - (C) Advocates or supports the election of the candidate; or
 - (D) Advocates or supports the candidate's defeat.
- (2) Any communication, exclusive of bumper stickers or other sundry items, that:
 - (A) Identifies an issue or question that will appear on the ballot at the next applicable election; or
 - (B) Advocates or supports the passage or defeat of the question or issue.

“Ballot issue committee” means a committee as defined in this section which has the exclusive purpose of making or accepting contributions or expenditures for or against any issue appearing on the ballot at the next applicable election.

“Campaign treasurer” means a person appointed under section 11-198, and, unless expressly indicated otherwise, includes deputy campaign treasurers.

“Candidate” means an individual who seeks nomination for election, or seeks election, to office. Until an individual terminates the individual's candidacy with the commission, an individual is a candidate if the individual does any of the following:

- (1) Files nomination papers for an office for oneself with the county clerk's office or with the chief election officer's office, whichever is applicable;
- (2) Receives contributions in an aggregate amount of more than \$100 or makes or incurs any expenditures of more than \$100 to bring about the individual's nomination for election, or to bring about the individual's election to office;
- (3) Gives consent for any other person to receive contributions or make expenditures to aid the individual's nomination for election, or the individual's election, to office; or
- (4) Is certified to be a candidate by the lieutenant governor or county clerk.

“Candidate's committee” means a committee as defined in this section which makes an expenditure or accepts a contribution in behalf of a candidate with the candidate's authorization.

“Commission” means the campaign spending commission.

“Commissioner” means any person appointed to the campaign spending commission.

“Committee” means:

- (1) Any organization, association, or individual that accepts or makes a contribution or makes an expenditure for or against any:
 - (A) Candidate;
 - (B) Individual who files for nomination at a later date and becomes a candidate; or
 - (C) Party;with or without the authorization of the candidate, individual, or party. In addition, the term “committee” means any organization, association,

or individual who accepts or makes a contribution or makes an expenditure for or against any question or issue appearing on the ballot at the next applicable election; or

- (2) Any organization, association, or individual that raises or holds money or anything of value for a political purpose, with or without the consent or knowledge of any:
 - (A) Candidate;
 - (B) Individual who files for nomination at a later date and becomes a candidate; or
 - (C) Party; andsubsequently contributes money or anything of value to, or makes expenditures on behalf of, the candidate, individual, or party. Notwithstanding any of the foregoing, the term “committee” shall not include any individual making a contribution or expenditure of the individual’s own funds or anything of value that the individual originally acquired for the individual’s own use and not for the purpose of evading any provision of this subpart, or any organization, which raises or expends funds for the sole purpose of the production and dissemination of informational or educational advertising.

“Contribution” means:

- (1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers for the purpose of:
 - (A) Influencing the nomination for election, or election, of any person to office;
 - (B) Influencing the outcome of any question or issue that appears or is reasonably certain to appear on the ballot at the next applicable election described in subparagraph (A); or
 - (C) Use by any party or committee for the purposes set out in subparagraph (A) or (B);
- (2) The payment, by any person political party, or any other entity other than a candidate or committee, of compensation for the personal services or services of another person that are rendered to the candidate or committee without charge or at an unreasonably low charge for the purposes set out in paragraph (1)(A), (1)(B), or (1)(C);
- (3) A contract, promise, or agreement to make a contribution; provided that notwithstanding this paragraph and paragraphs (1) and (2), the term “contributions” shall not include services or portions thereof voluntarily provided without reasonable compensation by individuals to or in behalf of a candidate or committee; or
- (4) Notwithstanding paragraphs (1), (2), and (3), a candidate’s expenditure of the candidate’s own funds or the making of a loan or advance in the pursuit of the candidate’s campaign shall not be a contribution for the purpose of this subpart but shall nevertheless be reportable as a campaign receipt.

“Earmarked funds” means contributions received by a committee or party on the condition that the funds be contributed to or expended on certain candidates, issues or questions.

“Election” means any election for office or for determining a question or issue provided by law or ordinance.

“Election period” means the two-year period between general election days if a candidate is seeking nomination or election to a two-year office and the four-year time period between general election days if a candidate is seeking nomination or election to a four-year office.

“Expenditure” means:

- (1) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution for the purpose of:
 - (A) Influencing the nomination for election, or election of any person seeking nomination for election, or election, to office whether or not the person has filed the person’s nomination paper;
 - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
 - (C) Use by any party or committee for the purposes set out in subparagraph (A) or (B);
- (2) The payment, by any person other than a candidate or committee, or compensation for the personal services of another person that are rendered to the candidate or committee for any of the purposes mentioned in paragraph (1); or
- (3) The expenditure by a candidate of the candidate’s own funds for the purposes set out in paragraph (1).
- (4) The term does not include volunteer personal services and voter registration efforts that are not partisan.

“House bulletin” means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.

“Immediate family” means a candidate’s spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.

“Individual” means a natural person.

“Loan” means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time.

“Matching payment period” means:

- (1) For a primary election, from January 1 of the year of a general election through the day of the primary election, or nine months prior to a special election through the day of a special election; and
- (2) For a general election, from January 1 of the year of a general election through the day of the general election.

“Newspaper” means a publication of general distribution in the State issued once or more per month which is written and published in the State.

“Noncandidate committee” means a committee as defined in this section and does not include a candidate’s committee.

“Office” means any elective public or constitutional office excluding county neighborhood board and federal elective offices.

“Party” means any political party which satisfies the requirements of section 11-61.

“Person” means an individual, partnership, committee, association, corporation, or labor union and its auxiliary committees.

“Political committees established and maintained by a national political party” means:

- (1) The National Committee;

- (2) The House Campaign Committee; and
- (3) The Senate Committee.

“Private contributions” means a monetary contribution other than from a candidate’s own funds or from the Hawaii election campaign fund.

“Qualifying campaign contribution” means an aggregate monetary contribution of \$100 or less, by any person during any matching payment period. Qualifying contributions do not include loans or in-kind contributions.

“Special election” means any election other than a primary or general election.

“Terminate candidacy” means the date on which a candidate has no surplus or deficit and has filed a notice of termination with the campaign spending commission on forms prescribed by the commission. [am L 1999, c 64, c 96, c 141, and c 187]

CSC Advisory Opinions

99-05 Coordinated expenses; 99-07 Local political party organizations; 00-01 Contributions for a future election; 00-04 Public service announcements; 00-07 Candidate employed in media; 01-07 Campaign related advertisements; 02-06 Qualifying campaign contributions; 02-08 contributions related to candidate appearances; 03-03 Contributions for talk story events

§11-192 Campaign spending commission. There is established a campaign spending commission. The commission shall consist of five members of the general public, appointed by the governor from a list of ten nominees submitted by the judicial council. The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper of general circulation. Any vacancies in the commission shall be filled by the governor with a member from the list of nominees or by reappointment of a commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34.

The judicial council shall meet and expeditiously select additional persons for the list of nominees whenever the number of the eligible nominees falls below five.

Notwithstanding section 26-34, these appointments shall not be subject to senatorial confirmation. The term of the commissioners shall be four years, except that the terms of the initial commissioners shall be two years for two commissioners, three years for two other commissioners and four years for the chairman, as determined by the governor.

The commissioners shall serve without compensation but they shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties. The commission shall be placed within the department of accounting and general services for administrative purposes. [am L Sp 1995, C 10 §2(3); am L 2003, c 117]

§11-192.5 Commissioners; political activities. (a) A member of the commission or its staff shall not participate in any political campaign during the member’s or employee’s term of office or employment including making a financial contribution to a candidate or political committee.

- (b) Each commissioner shall retain the right to:
 - (1) Register and vote as the commissioner chooses in any election;
 - (2) Participate in the nonpolitical activities of a civic, community, social, labor, or professional organization, or of a similar organization;
 - (3) Be a member of a political party or other noncandidate political organization and participate in its activities to the extent consistent with law; and
 - (4) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the commissioner’s efficiency or integrity as a commissioner or the neutrality, efficiency, or integrity of the commission.

(c) A commissioner may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics of this section. [L Sp 1995, c 10, pt of §2(1)]

§11-193 Duties of the commission. (a) The duties of the commission under this subpart are:

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
- (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;
- (6) To hold public hearings;
- (7) To investigate and hold hearings for receiving evidence of any violations;
- (8) To adopt a code of fair campaign practices as a part of its rules;
- (9) To establish rules pursuant to chapter 91;
- (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
- (11) To administer and monitor the distribution of public funds under this subpart;
- (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- (13) To employ or contract, without regard to chapters 76 and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- (14) To do random audits, field investigations, as necessary;
- (15) To file for injunctive relief when indicated;
- (16) To censure any candidate who fails to comply with the code of fair campaign practices; and
- (17) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the

campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for an advisory opinion.

- (b) In performing the functions and duties under this subpart, the commission may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects, to the commission office at any place in the State whether or not the subpoena is in connection with any hearing; provided that the person or documents subpoenaed shall be relevant to a matter under study or investigation by the commission. The books, papers, documents, or objects may be retained by the commission, for a reasonable period of time for the purpose of examination, audit, copying, testing, and photographing. The subpoena power shall be exercised by the chairperson of the commission or such other person as the chairperson may designate. Upon application of the commission, obedience to the subpoena shall be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by a circuit court.
- (c) The commission shall be exempt from section 26-35(1), (4), and (5) and shall:
 - (1) Make direct communications with the governor and legislature;
 - (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission without the approval of the comptroller; and
 - (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The commission shall follow all applicable personnel laws. [am L 1999, c 96; am L 2000, c 253, §150; am L 2004, c 57, §4]

§11-194 Registration. (a) Each candidate, committee, or party shall file an organizational report as set forth in section 11-196, or section 11-196.5 as applicable, within ten days from the date a candidate or candidate committee receives any contributions or makes expenditures, the aggregate amount of which is more than \$100, or within ten days from the date a noncandidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$1,000.

(b) Committees that form within ten days of an election and expend in the aggregate more than \$1,000 shall register and fully disclose the expenditure by 4:30 p.m. the last calendar day prior to the expenditure.

(c) Each candidate who files nomination papers for office with the chief election officer or county clerk shall file an organizational report within ten days of filing. [am L 1999, c 96 and c 141; am L 2000, c 99 §1]

§11-195 Filing of reports, generally. (a) All reports required to be filed under this subpart by a candidate or those committees directly associated with the candidate's candidacy shall be certified by the candidate and treasurer. Reports required to be filed under this subpart by a party or committee that supports more than one candidate shall be certified by a person authorized to sign the reports. All reports required to be filed under this subpart shall be open for public inspection in the office of the commission.

(b) The original and one copy of all reports required under this subpart shall be filed at the office of the commission. In the case of counties having less than two hundred thousand

voters, the filing shall be accomplished by filing an original and two copies of the required report with either the commission or the clerk of the county in which the candidate resides. The clerk shall then immediately mail the original and one copy of the report to the commission.

(c) The commission or county clerk shall give each person filing a report a receipt stating the type of report filed and the date and time of filing.

(d) All reports filed with the county clerk's office shall be preserved by that office for ten years.

(e) All reports required to be filed under this subpart shall at all times be available to the general public.

(f) For purposes of this subpart, whenever a report is required to be filed with the commission, "filed" means received in the office of the commission or county clerk, whichever is applicable, by the date and time specified for the filing of the report; except that a candidate or the committee of a candidate who is seeking election to the office of:

- (1) Governor;
- (2) Lieutenant governor;
- (3) Mayor;
- (4) Prosecuting attorney; or
- (5) County council;

shall file by electronic means in the manner prescribed by the commission. Candidates for offices named in this subsection with contributions or expenditures of less than \$5,000 need not file by electronic means. [am L 1999, c 96 and c 141]

CSC Advisory Opinion

01-02 Electronic filing

§11-196 Organizational report, candidate's committee. (a) The organizational report shall include:

- (1) The name and address of the candidate or individual, or committee, filing the report, including web page address, if any;
- (2) The name, address, office sought, district, and party affiliation, of each candidate or individual whom the committee or party is supporting;
- (3) The names and addresses of the campaign treasurer and deputies together with the treasurer's written acceptance of appointment;
- (4) The names and addresses of the campaign chairperson and deputy campaign chairperson together with the campaign chairperson's written acceptance of appointment;
- (5) A list of all banks, safety deposit boxes, or other depositories used with each applicable account number; and
- (6) The amount, name, and address, of each donor who has contributed an aggregate amount of more than \$100 since the last election applicable to the office being sought and the amount and date of deposit of each such contribution.

(b) Any change in information submitted in the organizational report with the exception of subsection (a)(6) shall be reported no later than 4:30 p.m. on the tenth calendar day after such change is brought to the attention of the candidate, committee, or campaign treasurer. [am L 2000 c 99, §2]

CSC Advisory Opinion

00-01 Contributions for a future election

§11-196.5 Organizational report; noncandidate committee. (a) The organizational report shall include:

- (1) The full name of the committee, which may not include the name of a candidate;
- (2) The complete mailing address and telephone number of the committee;
- (3) The date the committee was organized;
- (4) The area, scope, or jurisdiction of the committee;

- (5) An indication as to whether the committee is a political party committee;
 - (6) The name and mailing address of a corporation or an organization that provides funds to the committee. If the committee is not sponsored by or connected with a corporation or an organization, the committee must specify the trade, profession, or primary interest of contributors to the committee;
 - (7) The full name, mailing address, telephone number, occupation, and principal place of business of the chairperson;
 - (8) The full name, mailing address, telephone number, occupation, and principal place of business of the treasurer and any other officers;
 - (9) An indication of whether the committee was formed to support or oppose a specific ballot question or questions, or candidate and if so, a brief description of the questions or the name of the candidate;
 - (10) The full name, mailing address, telephone number, occupation, and principal place of business of the custodian of the books and accounts if other than the designated officers;
 - (11) The full name and address of the depository in which the committee will maintain its campaign account;
 - (12) Written acceptance of appointment by the chairperson and treasurer;
 - (13) A certification of the statement by the chairperson and the treasurer; and
 - (14) The name, address, occupation, and employer of each donor who has contributed an aggregate amount of more than \$100 since the last election and the amount and date of deposit of each such contribution.
- (b) The name of the committee designated on the statement of organizations must incorporate the full name of the sponsoring entity, if any. An acronym or abbreviation may be used in other communications if the acronym or abbreviation is commonly known or clearly recognized by the general public.
- (c) Any change in information submitted in the organizational report with the exception of subsection (a)(14) shall be reported no later than 4:30 p.m. on the tenth calendar day after the change is brought to the attention of the committee chairperson or treasurer. The accuracy of the information in the organizational report shall be affirmed, on forms provided by the commission, annually by September 1. [L Sp 1995, c 10, pt of §2(1)]

§11-197 Designated central committee. Each candidate for a statewide or county office who is supported by more than one committee shall designate a central committee which shall be responsible for aggregating the total contributions and expenditures of all committees directly associated with the candidate and for filing composite reports indicating this information pursuant to sections 11-212 and 11-213.

§11-198 Campaign treasurer. (a) Every committee, party, and candidate shall appoint a campaign treasurer on or before the day for filing an organizational report. Up to five deputy campaign treasurers may be appointed. A candidate may appoint oneself as campaign treasurer.

(b) A campaign treasurer may be removed at any time. In case of death, resignation, or removal of the campaign treasurer, the committee, party, or candidate shall promptly appoint a successor. During the period the office of campaign treasurer is vacant, the candidate, committee chairperson, or party chairperson, whichever is applicable, shall serve as campaign treasurer.

(c) Only the campaign treasurer and deputy campaign treasurers shall be authorized to receive contributions or make expenditures on behalf of the appointing candidate, committee, or party.

(d) A candidate may appoint on a fee or voluntary basis a person other than an officer or treasurer to specifically prepare and file reports with the campaign spending commission. [am L Sp 1995, c 10, §2(7)]

§11-199 Campaign contributions, generally. (a) All monetary contributions shall be promptly deposited in a depository institution, as defined by section 412:1-109, duly authorized to do business in the State, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the national credit union administration in the name of the candidate, committee, or party, whichever is applicable.

(b) Each candidate, committee, or party shall establish and maintain an itemized record showing:

- (1) The amount of each monetary contribution;
- (2) The description and value of each nonmonetary contribution; and
- (3) The name and address of each donor making a contribution of more than \$25 in value.

(c) No candidate, committee, or party shall accept a contribution of more than \$100 in cash from a single person without issuing a receipt to the donor and keeping a record of the transaction.

(d) Each committee and party shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked. [am L 1999, c 96, §5]

CSC Advisory Opinions

00-11 Financial institutions; 02-03 Food and sundry items sold

§11-200 Campaign contributions; restrictions against transfer. (a) A candidate, campaign treasurer, or candidate's committee shall not receive any contributions or receive or make any transfer of money or anything of value:

- (1) For any purpose other than that directly related:
 - (A) In the case of the candidate, to the candidate's own campaign; or
 - (B) In the case of a campaign treasurer or candidate's committee, to the campaign of the candidate, question, or issue with which they are directly associated; or

(2) To support the campaigns of candidates other than the candidate, for whom the funds were collected or with whom the campaign treasurer or candidate's committee is directly associated; or

(3) To campaign against any other candidate not directly opposing the candidate for whom the funds were collected or with whom the campaign treasurer or candidate's committee is directly associated.

(b) Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate's committee, as a contribution:

(1) May purchase from its campaign fund not more than two tickets for each event held by another candidate, committee, or party whether or not the event constitutes a fundraiser as defined in section 11-203;

(2) May use campaign funds for any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office, as the term is used in section 11-206(c), Hawaii Revised Statutes; and

(3) May make contributions from its campaign fund to any community service, educational, youth recreational, charitable, scientific, or literary organization, provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a), Hawaii Revised Statutes.

(c) This section shall not be construed to prohibit a party from supporting more than one candidate.

(d) This section shall not be construed to prohibit a candidate for the office of governor or lieutenant governor from supporting a co-candidate in the general election.

(e) This section shall not be construed to prohibit a candidate from making contributions to the candidate's party so long as that contribution is not earmarked for another candidate. [am L 2000, c 99, §3]

CSC Advisory Opinions

97-01 Funds received for state of county office can be used for a federal campaign; 98-01 Used to pay a commercial lease between a committee and a candidate; 98-11 Purchase of lease of campaign vehicle; 98-13 Legislative newsletters; 98-15 Candidates running as a team; 99-06 Legal defense fund; 00-01 Contributions for a future office; 00-02 Adopt a teacher program; 00-03 Use of campaign contributions for other candidates; 00-12 Candidate endorsements; 01-03 Campaign funds for candidate or charitable trusts; 01-04 Use of funds to donate to strikers; 01-08 Durable assets upon termination of candidacy; 01-09 Use of funds for banquets, golf tournaments and testimonials; 02-08 Contributions related to candidate appearances; 03-01 Contributions to parties; 03-03 Contributions for talk story events; 03-05 Ordinary and necessary use of campaign funds

§11-201 Anonymous contributions; unlawful. (a) No person shall make an anonymous contribution of the person's own money or property, or money of another person, to any candidate, party, or committee in connection with a nomination for election, or election. No candidate, party, or committee shall knowingly receive, accept, or retain an anonymous contribution, or enter or cause such contribution to be entered in its accounts as an anonymous contribution or in the name other than the true name of the person who actually furnished the contribution.

(b) No anonymous contribution received by a candidate, party, or committee shall be used or expended, but shall be returned to the donor. If the donor cannot be identified, the contribution shall escheat to the Hawaii election campaign fund.

(c) This section shall not apply to amounts that aggregate less than \$500 when obtained through multiple contributions made by ten or more persons at the same political function. Each such aggregate contribution shall be reported accompanied by a description of the means, method, place and date of receipt.

§11-202 False name. No person shall make a contribution of the person's own money or property, or money or property of another person to any candidate, party, or committee in connection with a nomination for election, or election, in any name other than the true name of the person who owns the money or who supplied the money or property.

All contributions made in the name of a person other than the true or established name of the actual owner of the money or property shall escheat to the Hawaii election campaign fund.

§11-203 Fundraisers and fundraising activities. (a) As used in this section, "fundraiser" means any function held for the benefit of a person that is intended or designed, directly or indirectly, to raise funds for political purposes for which the price or suggested contribution for attending the function is more than \$25 per person.

(b) There shall be no more than two fundraisers held for a person prior to a general or special election in which that person is either elected or defeated.

(c) No fundraiser or fundraising activity shall be held unless a notice of intent to hold the function is filed by the person in charge of the function with the commission prior to the date of the function setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the affair and the method thereof.

(d) Fundraisers sponsored by a candidate for a statewide office are exempt from the \$25 limit of subsection (a) and the restrictions of subsection (b), and fundraisers sponsored by a party for a political purpose for the general benefit of the party are exempt from the restrictions of subsection (b). [am L 1999, c 64, §2]

CSC Advisory Opinions

95-02 Charity fundraisers; 01-11 When changing campaigns within an election period

§11-204 Campaign contributions; limits as to persons.

(a)(1) No person or any other entity shall make contributions to:

- (A) A candidate seeking nomination or election to a two-year office or to the candidate's committee in an aggregate amount greater than \$2,000 during an election period;
- (B) A candidate seeking nomination or election to a four-year statewide office or to the candidate's committee in an aggregate amount greater than \$6,000 during an election period; and
- (C) A candidate seeking nomination or election to a four-year non-statewide office or to the candidate's committee in an aggregate amount greater than \$4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business.

- (2) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of the office the candidate is seeking to be less than the usual length of term of that office.

(b) No person or any other entity shall make contributions to a noncandidate committee in an aggregate amount greater than \$1,000 in an election; except that in the case of a corporation or company using funds from its own treasury, there shall be no limit on contributions or expenditures to the corporation or company noncandidate committee.

(c) A candidate's immediate family, in making a contribution to the candidate's campaign shall be exempt from the above limitation, but shall be limited in the aggregate to \$50,000 in any election period. The aggregate amount of \$50,000 shall include any loans made for campaign purposes to the candidate from the candidate's immediate family.

(d) A contribution by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution of the minor's parent or guardian.

(e) Any candidate, candidate's committee, or committee that receives in the aggregate more than the applicable limits set forth in this section in any primary, initial special, special, or general election from a person, shall be required to do one of the following:

- (1) Regardless of whether the excess donation was inadvertently made, to transfer an amount equal to any excess over the limits established in this section to the Hawaii election campaign fund within thirty days of receipt of the contribution, and in any event, no later than thirty days upon the receipt by a candidate, candidate's committee, or committee, of notification from the commission; or
- (2) If the excess donation was inadvertently made, to return to the donor any excess over the limits established in this section and to notify the commission within thirty days of receipt of the contribution.

A candidate, candidate's committee, or committee who complies with this subsection prior to the initiation of prosecution shall not be subject to any penalty under section 11-228.

(f) All payments made by a person or political party whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party, or any other person or committee, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, political committees established and maintained by a national political party, or any other person, or by any group of those persons shall be considered to be made by a single person or political party.

(g) A contribution made by two or more corporations shall be treated as one person when such corporations:

- (1) Share the majority of members of their boards of directors;
- (2) Share two or more corporate officers;
- (3) Are owned or controlled by the same majority shareholder or shareholders; or
- (4) Are in a parent-subsidiary relationship.

(h) An individual and any general partnership in which the individual is a partner, or an individual and any corporation in which the individual owns a controlling interest, shall be treated as one person.

(i) No committee which supports or opposes a candidate for public office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

(j) No contributions or expenditures shall be made to or on behalf of a candidate or committee by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations 110.4(a) and 110.9(a), as amended. No foreign-owned domestic corporation shall make contributions where:

(1) Foreign national individuals participate in election-related activities such as decisions concerning the making of contributions or the administration of a political committee; or

(2) The contribution funds are not domestically-derived.

(k) No person or any other entity other than political committees established and maintained by a national political party shall make contributions to a political party in an aggregate amount greater than \$25,000 in any two-year election period. No political committee established and maintained by a national political party, shall make contributions to a political party in an aggregate amount greater than \$50,000 in any two-year election period.

(l) Except for subsection (j), this section shall not apply to ballot issue committees. [am L 1999, c 96, §6 and c 187, §3; am L 200, c 99, §4 and c 242, §1]

CSC Advisory Opinions

95-01 Limits as to persons; 96-01 From noncandidate committees; 97-02 Limits for current/previous election period; 97-03.1 Partnerships; 97-04 Nomination or election to an office other than elected; 98-06 Limits as applied to trade associations; 98-14 Aggregation with other entities; 99-05 Coordinated expenses; 99-07 Local political party organizations; 99-08 Noncandidate committee contributions; 00-05 Limits when changing office; 01-01 Multiple committees; 01-05 Reapportionment or special election; 01-06 Event of a merger of two companies; 01-10 Special election to fill a vacancy; 01-11 When changing campaigns within an election period; 02-01 Impacted by reapportionment, special election or other factors; 02-02 Contributions from Palau; 02-05 Loans and contributions; 02-07 Limits for offices with overlapping election periods

§11-205 Campaign contributions; limits as to political parties. A contribution to a political party which is earmarked for a particular candidate or candidates shall be promptly distributed to such candidate and shall be reported by the candidate upon receipt as an individual contribution. Earmarked funds contributed pursuant to this section shall be counted:

(1) Toward the contribution limit of the political party donating such funds to a candidate or candidates; and

(2) Toward the contribution limit of the person or persons contributing such earmarked funds. [am L 1999, c 187, §4]

CSC Advisory Opinion

99-05 Coordinated expenses

§11-205.5 Campaign contributions by state contractors. (a) Any person making a contribution to any candidate, committee, or political party, and who has received, in any calendar year \$50,000 or more through contracts from the State, or county shall register and report that fact to the commission within thirty days of the date of the contribution or within thirty days of the date of the contract, whichever occurs later; provided that this section shall not apply to a person who has received \$50,000 or more through a grant, subsidy, or purchase of service agreement under chapter 42F or 103F.

(b) The commission shall prescribe forms and procedures for the reporting required in subsection (a) which, at a minimum, shall require the following information:

(1) The name and address of the person making the contribution;

(2) The name of the candidate, committee, or political party receiving the contribution;

(3) The amount of money received from the State or county, the dates,

- and information identifying each contract and describing the service performed or goods provided; and
- (4) If an entity is making the contribution, the names and business address of the principals, including officers and directors.
 - (c) The commission shall maintain a list of such reports for public inspection both at the commission's office and through the state FYI electronic bulletin board. [L Sp 1995, c 10, pt of §2(1); am L 1997 c 190, §6]

CSC Advisory Opinion

02-09 State contractor disclosure

§11-205.6 Campaign contributions; loans. (a) Any loan to a candidate or candidate's committee in excess of \$100 shall be documented and disclosed as to lender including the lender's name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the relevant repayment obligations under this section. Failure to document the loan or to disclose the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter.

(b) A candidate or candidate's committee may receive and accept loans in an aggregate amount not to exceed \$10,000 during an election period, provided that if the \$10,000 limit is reached, the candidate or candidate's committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full by the candidate or candidate's committee.

(c) If any loan made to a candidate is not repaid within one year of the date that the loan is made, the candidate and candidate's committee shall be prohibited from accepting any other loans, and all subsequent contributions received and any surplus retained shall only be expended toward the repayment of the outstanding loan, until the loan is repaid in full by the candidate or candidate's committee.

(d) No loan may be accepted or made by noncandidate committees.

(e) Any loan by a financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business, or a loan by a candidate of the candidate's own funds, or a loan from immediate family members of a candidate using their own funds to the candidate's committee shall not be deemed a contribution and not subject to the contribution limits provided under section 11-204 or the loan limit and repayment provisions of subsection (b) and (c); provided that loans from the immediate family members of the candidate shall remain subject to the provisions in section 11-204(c). [L Sp 1995, c10, pt of §2(1); am L 1997, c 375, §9]

CSC Advisory Opinion

02-05 Loans and contributions

§11-206 Campaign contributions; restrictions as to surplus. (a) Every candidate in a primary, special primary, special, or general election who has voluntarily agreed to abide by spending limits and who subsequently receives campaign contributions in an amount greater than the expenditure limit set for the candidate's respective office shall reserve use of these contributions until after a general or special election.

(b) Campaign contributions shall not be used for personal expenses or to qualify for public funding in any subsequent election, and shall not be transferred to another candidate as prohibited in section 11-200.

Where such contributions are used for the purchase or lease of consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate, they shall be reported to the commission pursuant to sections 11-212 and 11-213.

(c) Such contributions may be used after a general or special election for any fundraising activity for:

- (1) Any other politically related activity sponsored by the candidate;
- (2) Any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office; or

- (3) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization, provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a).
- (d) All contributions collected pursuant to this section shall be reportable under section 11-213. [am L 2000, c 99, §5]

CSC Advisory Opinions

96-03 Use of surplus funds; 98-11 Purchase or lease of campaign vehicle; 98-13 Legislative newsletters; 99-06 Legal defense fund; 01-03 Use of campaign funds for a candidate or charitable trust; 01-08 Durable assets upon termination of candidacy; 01-09 Use for banquets, golf tournaments and testimonials

§11-207 Other contributions and expenditures. (a) Expenditures, or disbursements for electioneering communications as defined in section 11-207.6, made by any person or political party for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's political committee, or their agents, shall be considered to be a contribution to such candidate and expenditure by such candidate.

The financing by any person or political party of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees, or agents shall be considered to be a contribution to such candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election.

(b) No funds shall be withdrawn or paid from a campaign depository except upon written authorization of the campaign treasurer.

(c) No expenditure for a candidate shall be made or incurred by any committee controlled by a candidate without specific written authorization of the candidate or the candidate's authorized representative. Every expenditure so authorized and made or incurred shall be attributed to the candidate with whom the committee is directly associated for the purpose of imposing the expenditure limitations set forth in section 11-209.

(d) For the purposes of this subpart, an expenditure shall be deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period covered by this subpart shall be deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably allocated between periods in accordance with the time the services or products are actually used. [am L 1999, c 140, §2]

CSC Advisory Opinions

99-05 Coordinated expenses; 02-04 Coordinated campaign expenditure limit

§11-207.5 Late contributions; reports. (a) Each candidate, candidate's committee, or committee, that within the period of fifteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m., three calendar days prior to the election.

(b) The report shall include the name, address, occupation and employer of the contributor, the name of the candidate, candidate's committee, or committee receiving the contribution, the amount of the contribution, the contributor's aggregate contributions to the candidate, candidate's committee, or committee, and the purpose, if any, to which the contribution will be applied.

(c) A report filed pursuant to this section shall be in addition to any other campaign report required to be filed by this subpart. [am L 1999, c 204, §1]

§11-207.6 Electioneering communications. (a) Every person who makes a disbursement for electioneering communications in an aggregate amount of \$2,000 during any calendar year shall, within twenty-four hours of each disclosure date provided in this section, file with the commission a statement of information described in subsection ((b)).

(b) Each statement required to be filed under this section shall contain the following information:

- (1) The identification of the person making the disbursement, any entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;
- (2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;
- (3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;
- (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;
- (5) If the disbursements were made by a committee, the names and addresses of all persons who contributed to the committee for the purpose of publishing or broadcasting the electioneering communications;
- (6) If the disbursements were made by an organization other than a committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and
- (7) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, political party or agent of any candidate, candidate committee or political party and, if so, the identification of the candidate, candidate committee, political party, or agent involved.

(c) For the purposes of this section:

"Disclosure date" means, for every calendar year, the first date by which a person has made disbursements during that same year of more than \$2,000, in the aggregate, for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

"Electioneering communication" means any paid advertising broadcast from a television or radio broadcast station, or published in any periodical or newspaper, or sent by mail at a bulk rate, which refers to a clearly identifiable candidate and is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election. "Electioneering communication" shall not include communications in a news story or editorial, communications which constitute expenditures by the disbursing organization, or communications in house bulletins. [am L 1999, 140, §1]

CSC Advisory Opinions

02-10 Electioneering communications; 03-02 Filing electioneering communication reports

§11-208 Voluntary campaign expenditure limitation. (a) Any candidate may voluntarily agree to limit the candidate's campaign expenditures and those of the candidate's committee or committees and the candidate's party in the candidate's behalf by filing an affidavit with the campaign spending commission.

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in section 11-209 and that the candidate is voluntarily agreeing to limit the candidate's expenditures and those made on the candidate's behalf by the amount set by law. The affidavit shall be subscribed to by the candidate and notarized.

(c) Affidavits in compliance with this section shall be filed by the time of filing of nomination papers with the chief election officer or county clerk. [am L 1999, c 64, §3]

§11-209 Campaign expenditures; limits as to amounts. (a) From January 1 of the year of any primary, special, or general election, the total expenditures for each election for candidates who voluntarily agree to limit their campaign expenditures, inclusive of all

expenditures made or authorized by the candidate alone and all campaign treasurers and committees in the candidate's behalf, shall not exceed the following amounts expressed respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor--\$2,50;
- (2) For the office of lieutenant governor--\$1.40;
- (3) For the office of mayor--\$2.00;
- (4) For the offices of state senator, state representative, county council member, and prosecuting attorney--\$1.40;
- (5) For the offices of the board of education and all other offices--20 cents.
- (b) A candidate or committee who has voluntarily agreed to the expenditure limits in

this section and who exceeds their respective expenditure limits shall pay the full filing fee and shall notify all opponents, the chief election officer, and the commission by telephone and in writing the day the expenditure limits are exceeded. All contributors shall be notified within thirty days of exceeding the expenditure limits. Notification to contributors shall include an announcement that tax deductions based on their contributions are no longer available. [am L 1999, c 64, §4]

CSC Advisory Opinion

99-03 Clarifies calculation of matching funds

§11-210 Study and recommendation. At least one year prior to a primary, special primary, or general election the commission shall submit to the legislature:

- (1) A study and recommendation of reasonable campaign expenditure and contribution limits and the factors which may be relevant in their establishment; and
- (2) A report concerning the status of the Hawaii election campaign fund, and shall request an appropriation if the total amount of revenues comprising the fund is insufficient to partially finance all candidates for a particular primary, special primary, or general election as set forth in section 11-218.

§11-211 House bulletins. The costs of preparing, printing, and circulating house bulletins and the writings, drawings, and photographs contained therein, except for paid political advertisements, shall be exempt from the provisions of this subpart.

§11-212 Preliminary reports.

(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk's office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:

- (A) July thirtieth of the year of the primary election;
- (B) Ten calendar days prior to each primary and initial special election; and
- (C) Ten calendar days prior to a special or general election.

(2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports:

- (A) The aggregate sum of all contributions and other campaign receipts received;
- (B) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported;
- (C) The amount and date of deposit of each contribution and the name and address, employer and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not

- previously been reported;
 - (D) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and
 - (E) A current statement of the balance on hand or deficit.
- (b) Each noncandidate committee shall file a preliminary report with the commission, on forms provided by the commission, no later than 4:30 p.m. on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:
- (1) The aggregate sum of all contributions and other campaign receipts received;
 - (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported;
 - (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address or each payee, which has not previously been reported;
 - (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
 - (5) A current statement of the balance on hand.
- (c) A candidate, party, or committee whose aggregate contributions and aggregate expenditures for the reporting period each total \$2,000 or less may file a short form report with the commission or appropriate county clerk's office in lieu of the reports required by this section and section 11-213.
- (d) Notwithstanding this section and section 11-213, a candidate, party, or committee whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less need not file a preliminary and final primary report, a preliminary and final general report, or a special election report, but shall file only a final election period report. [L am L 1999, c 96, §7; am L 2001, c 55, §2]

CSC Advisory Opinions

96-02 Reporting payee; 98-08 Expenditure reporting; 99-01 Sale or disposition of durable assets; 00-06 Free web page host; 00-08 Sale of nonmonetary contributions; 01-08 Durable assets upon termination of candidacy

§11-213 Final and supplemental reports. (a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary or initial special election. The report shall include the following information which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported;
- (3) The amount and date of deposit of each contribution and the name and address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period which, has not previously been reported;
- (4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (5) The cash balance and a statement of surplus or deficit.

(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-105, with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary election. The report shall include the following information, which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

(c) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period general report with the commission on forms provided by the commission, no later than 4:30 p.m. on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.

(d) Termination. A candidate, party, or committee may terminate registration with the commission with no surplus or no deficit. A termination report approved by the commission shall include information on the disposition of any funds, which has not previously been reported.

(e) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than 4:30 p.m. on the thirtieth day after the last day of the election year.

(f) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall:

- (1) Maintain the cash surplus in a financial depository; and
- (2) Every six months, until the candidate files to be on the ballot with the state office of elections or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than 4:30 p.m. on the thirtieth calendar day after the last day of the election year.

(g) All supplemental reports required by this section shall be filed until a candidate files to be on the ballot with the state elections office. Each party or noncandidate committee shall file a supplemental report for the respective reporting period during a nonelection year. In an election year, each party and noncandidate committee shall file reports as prescribed in this section and section 11-212 for the primary and general election. [am L 1999, c 96, §8]

CSC Advisory Opinions

96-02 Reporting payee; 98-08 Expenditure reporting; 99-01 Sale or disposition of durable assets; 00-06 Free web page host; 00-08 Sale of nonmonetary contributions; 00-13 Outstanding checks; 01-08 Durable assets upon termination of candidacy

§11-214 Disposition of funds. (a) All candidates who withdraw or cease to be candidates, or committees directly associated, with such candidates, individuals, who receive contributions but fail to file for nomination, or committees or parties which discontinue their

activities covered in this subpart, shall return all residual private contributions to the donors of such contributions within four years if their identities are known, provided that if the identity of any donor is not known, or the donor cannot be found, such contribution shall escheat to the Hawaii election campaign fund or may be donated to a nonprofit organization of the candidate's choice. In the event of a death of a candidate, the candidate's committee, if any, shall return all residual private contributions to the donors of such contributions, provided that any residual contributions not returned to the donors within sixty days of the candidate's death shall escheat to the Hawaii election campaign fund or may be donated to a nonprofit organization of the candidate's choice.

(b) All residual public funds shall be returned to the Hawaii election campaign fund.

(c) Upon disposition of all residual funds, the candidate or campaign treasurer shall file a report with the commission, reporting the amounts distributed under this section and the manner of disposition.

(d) This section shall not apply to:

(1) Elected officials;

(2) Candidates who failed to be nominated or elected yet who become a candidate for nomination or election to office within four years thereafter;

(3) Elected officials who resign their office before the end of their term yet who file to become a candidate for reelection within four years after the end of the term from which they resigned; or

(4) Elected officials who do not seek reelection yet who file to become a candidate for election within four years after the end of the term from which they did not seek reelection. [am L 2000, c 242, §2]

CSC Advisory Opinions

96-04 Residual funds; 99-02 Disposition of residual funds; 00-13 Outstanding checks

§11-215 Advertising. (a) All advertisements shall contain the name and address of the candidate, committee, or party paying for the advertisement. If an advertisement is not authorized by a candidate or a candidate's committee, the advertisement shall contain the name and address of the person paying for the advertisement.

(b) In addition to subsection (a), no candidate or committee shall cause or submit any advertisement in support of a candidate, against a candidate's opponent, or with regard to a ballot issue to be published, broadcast, televised, or otherwise circulated and distributed except under the following conditions:

(1) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate, provided that in the event that the literature or advertisement is paid for by a candidate or committee directly associated with a candidate, or ballot issue committee, the notice of approval and authority need not be included; or

(2) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised or circulated without the approval and authority of the candidate.

(c) The penalty for violating this section shall be a fine not to exceed \$25 for each advertisement that lacks the required disclaimer and no more than \$5,000 aggregate. [am L 1999, c 96, §9]

§11-216 Complaints, investigation, and notice; determination. (a) Complaints of violations of this subpart against any person shall be filed with the commission. The complaint shall be in writing and shall be signed under oath by the complainant. Complaints initiated by the commission shall be in writing and signed by the executive director.

(b) The commission shall give notice of receipt of the complaint together with a copy of the complaint to the person cited and shall afford the person an opportunity to explain or otherwise respond to the complaint at a meeting promptly noticed by the commission and conducted under chapter 92. The commission shall promptly determine, without regard to

chapter 91, to summarily dismiss the complaint, cause further investigation, make a preliminary determination, or refer the complaint to an appropriate prosecuting authority for prosecution under section 11-229.

(c) Upon hearing the response of the person cited, if the person elects to respond to the complaint, and upon completion of any investigation, the commission may make a prompt preliminary determination as to whether probable cause exists that a violation of this subpart has been committed. In lieu of an administrative determination that a violation of this subpart has been committed, the commission may refer the complaint to the attorney general or county prosecutor pursuant to section 11-229 at any time it believes that the person cited may have intentionally, knowingly, or recklessly committed a violation.

(d) If the commission makes a preliminary determination that there is probable cause to believe that a violation of this subpart has been committed, its preliminary determination with findings of fact and conclusions of law shall be served upon the person cited by certified mail. The person shall be afforded an opportunity to contest the commission's preliminary determination of probable cause by making a request for a contested hearing under chapter 91 within twenty days of receipt of the preliminary determination. Failure to request a contested hearing will result in the commission's preliminary determination being deemed a final determination of violation.

- (1) Any person who appears before the commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission shall receive reimbursements as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby, may appear personally before the commission on the person's own behalf or file a written statement for incorporation into the record of the proceeding.
- (2) The commission shall cause a record to be made of all proceedings pursuant to this subsection. Any hearing conducted by the commission to contest the preliminary determination of probable cause shall be conducted pursuant to chapter 91 and any rules adopted by the commission. All contested hearings shall be heard before the commission or a duly designated hearings officer.
- (3) All parties shall be afforded full opportunity to present evidence and argument on all issues involved. The commission or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party or is otherwise not conducive to the ends of justice. The commission shall not be bound by strict rules of evidence when conducting a hearing to determine whether a violation of this subpart has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.
- (4) A hearings officer shall render a recommended decision for the commission's consideration and any party adversely affected by the decision may file written exceptions with the commission within fifteen days after receipt of a copy of the decision by certified mail.
- (5) The commission, as expeditiously as possible, after the close of the hearing, shall issue its final determination of violation together with separate findings of fact and conclusions of law regarding whether a violation of this subpart has been committed.

(e) In the event the commission makes a final determination that a violation of this subpart does not exist, the complaint shall be dismissed.

(f) If the commission renders a final determination of violation, its written decision with findings of fact and conclusions of law may also provide, without limitation the following orders:

- (1) The return of any contributions;

- (2) The reimbursement of any unauthorized expenditure;
- (3) The payment of any administrative fine payable to the Hawaii election campaign fund;
- (4) Cease and desist violation of this subpart; or
- (5) File any report, statement, or other information as required by this subpart.

(g) The commission may waive further proceedings because of action the person cited or respondent takes to remedy or correct the alleged violation, including the payment of any administrative fine. The commission shall make the remedial or corrective action taken by the respondent, the commission's decision in light of the action to waive further proceedings, and the commission's justification for its decision, a part of the public record. [am L 1999, c 96, §12 and c 141, §3]

§11-217 Hawaii election campaign fund; creation. The Hawaii election campaign fund is created as a trust fund within the state treasury. The fund shall consist of all moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5, any general fund revenues appropriated, as well as all other moneys collected pursuant to this subpart. Payment to each candidate from the fund shall be by the comptroller in the manner prescribed in section 11-222. Moneys from this fund may also be used for the operating expenses of the commission, including staff salaries and fringe benefits. [am L Sp 1995, c 10, §2(20); am L 1997, c 375, §15; am L 1998, c 50, §1]

§11-217.5 Depletion of fund. (a) The Hawaii election campaign fund shall be under no obligation to provide moneys to qualified candidates in the event that moneys in that fund have been depleted.

(b) In the event that the Hawaii election campaign fund is close to depletion, as determined by the commission, the commission shall determine the amounts available to qualified candidates based on their order of eligibility in qualifying for public funds, as determined by the date of filing of an application for public funds with the commission pursuant to section 11-222; provided that the application has been accepted by the commission. [am L 1999, c 64, §5]

§11-218 Candidate funding; amounts available. (a) The maximum amount of public funds available to a candidate for the office of governor, lieutenant governor, or mayor in any election year shall not exceed ten per cent of the total expenditure limit for each election as established for each office listed in this subsection pursuant to section 11-209.

(b) For the office of state senator, state representative, county council member, and prosecuting attorney, the maximum amount of public funds available to a candidate in any election year shall be fifteen per cent of the total expenditure limit for each election as established for each office listed in this subsection pursuant to section 11-209.

(c) For the board of education and all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.

(d) Each candidate who qualified for the maximum amount of public funding in any primary or special primary election and who is a candidate for a subsequent general election shall apply with the commission to be qualified to receive the maximum amount of public funds as provided in this section for the respective election. For purposes of this section qualified means meeting the qualifying campaign contribution requirements of section 11-219. [am L 1999, c 64; am L 2000, c 99 §6]

CSC Advisory Opinions

98-10 Maximum amount of public funds; 99-03 Clarifies calculation of matching funds

§11-219 Qualifying campaign contributions; amounts. As a condition of receiving public funds for a primary, special primary, or general election, a candidate shall not be unopposed in any election for which public funds are sought, and shall have filed an affidavit with the commission pursuant to section 11-208 to voluntarily limit the candidate's campaign

expenditures and shall be in receipt of the following sum of qualifying campaign contributions for the candidate's respective office for each election;

- (1) For the office of governor--qualifying contributions that in the aggregate, exceed \$100,000;
- (2) For the office of lieutenant governor--qualifying contributions that in the aggregate, exceed \$50,000;
- (3) For the office of mayor for each respective county:
 - (A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$50,000;
 - (B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$15,000;
 - (C) County of Maui--qualifying contributions that in the aggregate, exceed \$10,000; and
 - (D) County of Kauai--qualifying contributions that in the aggregate, exceed \$5,000; and
- (4) For the office of prosecuting attorney for each respective county:
 - (A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$30,000;
 - (B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$10,000; and
 - (C) County of Kauai--qualifying contributions that in the aggregate, exceed \$5,000;
- (5) For the office of county council for each respective county:
 - (A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$5,000;
 - (B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$1,500;
 - (C) County of Maui--qualifying contributions that in the aggregate, exceed \$5,000; and
 - (D) County of Kauai--qualifying contributions that in the aggregate, exceed \$3,000;
- (6) For the office of the state senator--qualifying contributions that, in the aggregate, exceed \$2,500;
- (7) For the office of state house of representative--qualifying contributions that, in the aggregate, exceed \$1,500; and
- (8) For all other offices, qualifying contributions that, in the aggregate exceed \$500. [am L 1999, c 64, §7]

CSC Advisory Opinions

02-06 Qualifying contributions

§11-220 Eligibility for payments. (a) To be eligible to receive payments under section 11-217, a candidate shall in writing:

- (1) Agree to obtain and furnish to the commission any evidence of the campaign expenses of such candidate which the commission may require;
- (2) Agree to keep and furnish records, books, and other information which the commission may request; and
- (3) Agree to an audit and examination by the commission under section 11-225 and to pay any amounts required to be paid pursuant to such section.

(b) To be eligible to receive payments pursuant to section 11-217, a candidate shall certify to the commission that:

- (1) Such candidate and all committees authorized by such candidate shall not incur campaign expenses in excess of the expenditure limitations imposed by section 11-209;

- (2) Such candidate has qualified to be on the election ballot in a primary, special primary, or general election;
- (3) Such candidate has filed a statement of intent to seek qualifying contributions. A contribution received before the filing of a statement of intent to seek public funds shall not be considered a qualifying contribution;
- (4) Such candidate or committee authorized by such candidate has received the qualifying sum of private contributions for the office sought by the candidate as set forth in section 11-219;
- (5) The aggregate of contributions certified with respect to any person under paragraph (4) does not exceed \$100.
- (c) Each candidate and all committees authorized by such candidate in receipt of qualifying campaign contributions which may be taken into account for purposes of public funding shall maintain, on a form prescribed by the commission, records which show the date and amount of each such contribution and the full name and mailing address of the person making the contribution. The candidate and all committees authorized by the candidate shall transmit to the commission all reports with respect to such contributions which the commission may require.

CSC Advisory Opinion

02-06 Qualifying campaign contributions

§11-221 Entitlement to payments. Every candidate who is eligible to receive public funds pursuant to section 11-220 is entitled to payments pursuant to section 11-217 in an amount equal to each qualifying contribution received by that candidate or candidate committee during the matching payment period involved. A qualifying contribution shall be attributed to a primary, special or general election.

A candidate eligible to receive public funds must obtain a minimum amount of qualifying campaign contributions as set forth in section 11-219 in order to be entitled to receive any matching public funds in an election. For the purpose of this section, a candidate must have at least one other qualified candidate as an opponent for the primary, special, or general election to receive public funds for that election.

CSC Advisory Opinion

02-06 Qualifying campaign contributions

§11-222 Candidate funding; application. (a) Application forms for public funds shall be adopted by the commission and shall provide for a sworn statement by the candidate that the candidate has established eligibility under section 11-220 to receive payments under section 11-217. Each application shall be accompanied by a qualifying campaign contribution statement or statements, and shall be filed with the commission no later than thirty days after the general election. Upon approval by the commission of the application and qualifying contribution statement, the commission shall direct the comptroller to distribute matching public funds up to the maximum of the amount of public funds to which the candidate is entitled.

Public funds shall be distributed by the comptroller to each eligible candidate within twenty days from the date of the candidate's initial application with the commission.

(b) Each candidate in receipt of the qualifying sum of contributions established for the candidate's office may apply to the commission for public funding after the candidate has become a candidate in a primary, special primary, special, or general election.

(c) The commission shall make additional certification within two weeks after receiving an application and supplemental contribution statement from an eligible candidate who request additional public funding pursuant to section 11-221.

(d) Initial certification by the commission under subsection (a) and all determinations made by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 11-225. [am L 1999, c 64, §8]

§11-223 Candidate funding; restrictions. (a) Each candidate who accepts public campaign funds under this subpart shall be required to abide by the campaign spending

limits for the candidate's respective office as set forth in section 11-209. Any candidate who exceeds the spending limits for the candidate's respective office as set forth in section 11-209 shall immediately return all of the public campaign funds the candidate has received to the Hawaii election campaign fund.

- (b) Public campaign funds provided under this subpart shall only be used to:
 - (1) Defray campaign expenses incurred by and paid for an eligible candidate or all committees authorized by such candidate; and
 - (2) Repay loans, the proceeds of which were used to defray campaign expenses.
- (c) No candidate or committee authorized by a candidate shall be entitled to receive any public funds under this subpart unless the candidate has qualified to have the candidate's name on the election ballot in the election for which funds are sought.
- (d) In no event shall any candidate or campaign treasurer in receipt of public campaign funds transfer any portion of such funds to another candidate for any primary, special primary, special, or general election campaign.
- (e) All public funds received under this subpart shall be deposited in a financial institution designated to do business in the State. No expenditures of any public funds received under this subpart shall be made except by checks drawn on such checking account. The commission may require such reports relating to the expenditure of such funds as it considers appropriate.
- (f) Each candidate, on the deadline for filing of a final report for any primary, special primary, special, or general election, shall return all unexpended public funds to the Hawaii election campaign fund. [am L 1999, c 64, §9]

CSC Advisory Opinion

00-09 Authorized use of public funds

§11-224 Public funds; report required; return of funds. The campaign treasurer of the candidate shall produce evidence to the commission no later than twenty days after a primary or special primary election; and no later than thirty days after a special or general election that all public funds paid to the candidate have been utilized as required by this subpart.

Should the commission determine that any part of the public funds have been used for noncampaign or improper expenses, it shall report such findings to the attorney general and shall order the candidate to return all or part of the total funds paid to the candidate for a primary, special primary, special, or general election. When such funds are returned, they shall be deposited in the Hawaii election campaign fund.

§11-225 Public funds; examination and audit, payments. (a) Within sixty days after each general election, the commission shall conduct an examination and audit of all public funds received by the candidate and of the campaign contributions used for purposes of qualifying for public funding under this subpart, and the campaign expenses incurred by all candidates who received payments pursuant to section 11-217.

(b) The campaign spending commission shall issue, prior to the payment of any public money, rules which detail which expenses and evidence thereof qualify as acceptable campaign expenses for purposes of this section.

(c) Should the commission determine that any payment of public funds made to an eligible candidate pursuant to section 11-221 was in excess of the aggregate amount of payments to which such candidate was entitled, the commission shall notify such candidate and such candidate shall pay to the Hawaii election campaign fund a sum equal to the amount of excess payment.

(d) If the commission determines that any amount of any public funds made to a candidate under section 11-217 was used for any improper purpose, the commission shall so notify the candidate, and the candidate shall pay to the fund an amount equal to three hundred per cent of such amount.

(e) Any candidate who has received public funds under section 11-217 and who is convicted of violating any provision of this subpart shall, upon notification by the commission, pay to the Hawaii election campaign fund the full amount of public funds received by such candidate.

(f) No notification shall be made by the commission under subsection (c) with respect to the payment of excess public funds more than two years after the payment of such funds.

§11-226 Tax deductions. (a) As a condition of allowing an individual to take a tax deduction for campaign contributions to a candidate pursuant to section 235-7(g)(2), a candidate shall have filed an affidavit with the commission prior to or simultaneous with the filing of the candidate's organizational report stating that the candidate shall not exceed the expenditure limit for the candidate's respective office as set forth in section 11-209.

(b) The affidavit shall remain effective until the termination of the central committee of the candidate or the opening of filing for the next succeeding election for the office held or sought at the time of filing of the affidavit whichever occurs first. An affidavit filed under this section may not be rescinded.

(c) The director of taxation shall not allow any individual or married couple filing jointly to take a deduction against any tax due, pursuant to section 235-7(g)(2), for any contribution to a candidate for statewide or county office, who has not filed an affidavit as provided in this section.

(d) The commission shall forward a certified copy of any affidavit filed under this section to the director of taxation.

(e) The director of taxation shall only allow an individual or married couple filing jointly to take an income tax deduction, pursuant to section 235-7(g)(2), for any contribution to a candidate for a statewide or county office, if a receipt is attached to the state income tax return. Canceled checks or copies of the same shall be considered adequate receipt forms.

(f) If a candidate has not filed an affidavit pursuant to this section, the candidate shall inform all contributors to the candidate's campaign in writing immediately upon receipt of the contribution that they are not entitled to count their contributions to the candidate for purposes of taking a tax deduction under this section.

§11-227 Public notices. (a) Forty-five days before each primary, special primary, special, or general election, and at such other times as may be appropriate, the commission may give public notices to communicate to the public the following:

- (1) A candidate who has signed an affidavit pursuant to section 11-208 to abide by the expenditure limits for the candidate's respective office as imposed by this subpart;
- (2) A candidate has filed an affidavit to abide by spending limits, but who has exceeded the expenditure limits pursuant to section 11-209;
- (3) A candidate who has failed to file a report required under this subpart, or who has failed to correct a deficient report after notice of such deficiency or failure to file has been mailed to the candidate pursuant to section 11-193(a)(5); and
- (4) Any flagrant violation of any other provision of this subpart.

(b) In giving public notice under this section, the commission shall endeavor to bring fair public light to the incident or violation involved. [am L 1998, c 2, §6]

§11-228 Administrative fines; relief. (a) In the performance of its required duties, the commission may render a decision or issue an order affecting any person violating any provision of this subpart or section 281-22 that shall provide for the assessment of an administrative fine in the manner prescribed as follows:

- (1) If a natural person, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure, whichever is greater; or
- (2) If a corporation, organization, association, or labor union, it shall be punished by a fine not exceeding \$1,000 for each occurrence; and

- (3) Whenever a corporation, organization, association, or labor union violates this subpart, the violation shall be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.
- (b) Any order for the assessment of an administrative fine may not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91. A person may waive these rights by written stipulation or consent. If an administrative fine is imposed upon a candidate, the commission may order that the fine, or any portion, be paid from the candidate's personal funds.
- (c) If an order issued by the commission is not complied with by the person to whom it is directed, the first circuit court, upon application of the commission, shall issue an order requiring the person to comply with the commission's order. Failure to obey such a court order shall be punished as contempt.
- (d) Any administrative fine collected by the commission shall be deposited in the Hawaii election campaign fund.
- (e) Any person or the commission may sue for injunctive relief to compel compliance with this subpart.
- (f) The provisions of this section shall not be construed to prohibit prosecution under any appropriate provision of the Hawaii Penal Code or section 11-229.
- (g) The provisions of this section shall not apply to any person who. Prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by section 11-193(a)(5) and 22-215(c). [am L 1999, c 96; am L 2000, c 99 §7; am L 2002, c 111, §2]

§11-229 Criminal prosecution. (a) Any person who knowingly, intentionally, or recklessly violates any provision of this subpart shall be guilty of a misdemeanor. A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.

(b) For purposes of prosecution for violation of this subpart, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

- (1) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court; provided that prosecution may commence prior to any proceeding initiated by the commission or final determination;
- (2) In the case of state offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and
- (3) In the case of all other offices, parties, or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

In the commission's choice of prosecuting agency, it shall be guided by whether there will be any conflicting interest between the agency and its appointive authority.

(c) The court shall give priority to the expeditious processing of suits under this section.

(d) Prosecution for violation of any provision of this subpart shall not be commenced after five years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed under section 11-193(a)(5), and 11-215(c). [am L 1999, c 96, §11; am L 2000, c 99 §8]

